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Letter dated 23 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 November 2003 (S/2003/1129). The Counter-Terrorism Committee has received the attached fourth report from Jamaica submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 20 February 2004 from the Permanent Representative of Jamaica to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In accordance with instructions from the Government, I have the honour to forward, pursuant to correspondence dated 12 November 2003, the report of the Government of Jamaica on issues raised by the Counter-Terrorism Committee (see enclosure). The Government of Jamaica reaffirms its cooperation in providing the Committee with further reports or information, as necessary, or if so requested by the Committee.

(*Signed*) Stafford **Neil**
Ambassador
Permanent Representative

Enclosure

Report of the Government of Jamaica to the Counter-Terrorism Committee

Effectiveness and protection of the financial system

1.1

The Bill entitled the Terrorism Prevention Act, 2003 (hereinafter "the Bill") was tabled in the House of Representatives on October 28, 2003. The purpose of this legislation is to implement Security Council resolution 1373. It is currently before the House of Representatives for consideration and its passage is anticipated in 2004. This piece of legislation is the vehicle through which Jamaica will also implement the terrorism conventions to which Jamaica is not yet a party. Once the legislation is passed, Jamaica would take the relevant steps to become a party to the outstanding conventions.

Clauses 15 and 16 of the Bill impose a duty on various legal entities to report on a continuing basis whether they are in possession or control of property owned or controlled by a 'listed entity.' A listed entity being one included on a list generated by the Director of Public Prosecutions on the basis that such an entity is believed to have committed or is suspected of having committed terrorist offences or has facilitated same. Clause 16 also imposes a duty to report any suspicious transactions. Failure to comply with these provisions constitutes an offence.

Since the Bill imposes reporting requirements and contemplates a parallel reporting regime to that in the Money Laundering Act, it was no longer necessary to amend the latter Act to include terrorism and terrorism financing as 'predicate offences.'

The Bill to amend the Bank of Jamaica Act to regulate money transfer and remittance agents/agencies was recently approved by the House of Representatives.

The adoption of the recommendations of the Financial Crimes Task Force is to be implemented through legislation. Accordingly, approval for the issuing of drafting instructions for a Bill to amend the Money Laundering Act to extend its application to include charities has been sought. Consequential amendments may also be necessary to related legislation.

Further, a new Bill is being drafted entitled the Proceeds of Crime Act, primarily to introduce civil forfeiture and to address certain operational issues with respect to money laundering and other financial crimes.

The Terrorism Bill facilitates the freezing of assets via the use of restraint and forfeiture orders as well as the seizure of property pursuant to search warrants.

Clause 35 of the Bill provides that the Court may make a restraint order against any property or 'applicable property,' whether it is situated inside or outside of Jamaica, where the defendant has been convicted of a terrorism offence, charged with a terrorism offence and there are reasonable grounds for believing that the defendant committed the offence.

Applicable property means property that has been used to facilitate or carry out a terrorism offence or is property that is realised from the commission of a terrorism offence.

A restraint order may prohibit the defendant or any other person from disposing of or otherwise dealing with the property or impose restrictions on the use of the property as the Court deems fit.

Clause 28 provides that the Court, upon the application of the Director of Public Prosecutions, may forfeit the property of a convicted defendant, wherever it is situated.

It should be noted also that Clause 24 of the Bill provides that a constable in the discharge of a search warrant is deemed authorised to seize property that he believes on reasonable grounds to be applicable property.

The Bill sets out the grounds for making such applications and the rights of the various parties before the Court in relation to said property. Orders may be made in relation to property that is not situated in Jamaica and in relation to the commission of an offence under Clause 6 of the Bill which provides that it is an offence for a Jamaican national outside of Jamaica to deal with property for terrorist purposes.

Effectiveness of Counter Terrorism Machinery

1.2

An extensive consultation and review of existing legislation, the international anti-terrorism instruments, foreign anti-terrorism legislation and the Commonwealth Secretariat Report of the Expert Working Group on Legislative and Administrative Measures to Combat Terrorism, by an Inter-Ministerial Working Group comprised of representatives from the Ministries of Justice, National Security, Foreign Affairs and Foreign Trade as well as the Attorney-General's Department, Office of the Chief Parliamentary Counsel (CPC), the Legal Reform Department, the Director of Public Prosecutions and the Bank of Jamaica, culminated in the drafting of the Terrorism Bill currently being debated in Parliament. This Bill, as previously noted, was tabled in October 2003 and its passage is anticipated in 2004.

1.3

Once domestic legislation is in place to facilitate local implementation of the provisions in the anti-terrorism instruments, Jamaica intends to accede or ratify the Agreements to which it is not yet a party. The passage of the Terrorism Prevention Bill, which is anticipated shortly, will ensure this process.

Jamaica is a party to the following Conventions:

- Convention on Offences and Certain Other Acts committed on Board Aircraft;
- Convention for the Suppression of Unlawful Seizure of Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; and
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons.

Jamaica has signed the following Conventions:

- International Convention against the Taking of Hostages;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; and
- International Convention for the Suppression of the Financing Terrorism.

No treaty action has yet been taken in relation to the following Conventions:

- Convention on the Physical Protection of Nuclear Material;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf;
- Convention on the Marking of Plastic Explosives for the purpose of detection; and
- International Convention for the Suppression of Terrorist Bombings.

Effectiveness of customs, immigration and border control

1.4

Jamaica imposes obligations with respect to the making of declarations and obtaining prior authorisation before the movement of cross border movement of cash, negotiable instruments, precious metals or gold is permissible.

The prohibition and restriction of goods are in the laws and regulations of different government agencies and departments. One of the functions of Jamaica Customs is to act as a 'watchdog' for these different institutions. Therefore, as it relates to the cross border movement of cash, precious stones and metal, Jamaica Customs is authorised to detain persons and goods that violate the Money Laundering Act, the Bank of Jamaica Act and the Trade Board Act. In addition, the Customs Department works in partnership with the Financial Investigation Division (FID) and reports suspicious cross border movements of imports and exports.

Customs Controls

Import

Jamaica Customs imposes restrictions on the amount of cash a person can have in his possession on entry to the country. In accordance with the Money Laundering Act (1996), a person entering the ports of Jamaica is obligated to declare ten thousand United States Dollars (US$ 10,000.00) or more, or its equivalent in any other legal currency or negotiable instrument. In the case where the person makes a declaration, the information is subsequently passed on to the Financial Investigation Division (FID).

With regard to the importation of precious stones and metal, there are no restrictions. However, a person entering the country is obligated to declare all items that are not used as personal effects. A tariff is levied on stones and precious metals. If there is suspicion surrounding the item, the Customs Official has the authority to notify the police and/or the FID.

Failure to declare any item in the prescribed manner constitutes false declaration or smuggling. This may result in prosecution under sections 209 and/or 210 of the Customs Act.

Export

Control is placed on the exportation of cash, negotiable instruments, precious stones and metals. Pursuant to the Bank of Jamaica Act and the Trade Board Act, it is obligatory that an exporter seek prior authorisation when exporting cash, precious metals or stones. This is achieved by obtaining an export license. The exporter is also obligated to declare the items being exported.

1.5

The Draft Bill entitled the Port Security Act is currently being examined by the relevant government agencies. On completion of this exercise the draft Bill will be amended, if necessary, before being presented for consideration by the Legislation Committee.

1.6

Sections 3–8, Chapter II of the Constitution of Jamaica, provide that persons may become citizens of Jamaica in accordance with constitutional provisions by birth, descent or registration based on marriage to a Jamaican citizen.

Citizenship by birth includes birth on board a ship or aircraft registered in Jamaica or belonging to the Government of Jamaica.

A person born outside of Jamaica becomes a citizen of Jamaica on the date of his birth, if at such date his mother or his father is a citizen of Jamaica.

Citizenship by descent is not limited to first generation or indeed any family generation and may be acquired upon sufficient documentary evidence that the applicant is the descendant of a Jamaican national.

Marriage to a Jamaican citizen entitles the spouse to acquire Jamaican citizenship by registration. However, such registration may be denied if the marriage was contracted primarily to enable the acquisition of Jamaican citizenship, where the parties have no intention to live permanently as spouses after marriage or where the spouse had been convicted in any country of a criminal offence specified in any law that makes provisions for the denial on the grounds of conviction.

A person who is a Jamaican citizen by virtue of birth or descent may not be deprived of such citizenship. However, persons who acquire Jamaican citizenship by registration or naturalization may be deprived of such citizenship where the law so provides.

Section 3 of the Jamaican Nationality Act provides that Commonwealth citizens or a citizen of the Republic of Ireland, of full age and capacity, at the discretion of the Minster of National Security, may be registered as a citizen of Jamaica if he has been ordinarily resident or in the service of the Crown or the Government of Jamaica for a five (5) year period preceding the application for registration.

Similarly, under Section 6, an alien or a British protected person of 'full age and capacity' may be registered as a citizen of Jamaica, provided that certain qualifications are satisfied. In the case of an alien, these qualifications are:

- Has resided in Jamaica for twelve (12) months preceding the date of application;
- That during the preceding seven years, prior to the twelve (12) month period, has resided for periods in aggregate of at least four (4) years;
- Is of good character; and
- Intends to reside in Jamaica.

In the case of a British protected person, ordinary residence for at least five (5) years or such less time as the Minister of National Security may in special circumstances accept.

Once the applicant has satisfied these various qualifications, a certificate of naturalization is issued and upon taking the prescribed oath of allegiance, the applicant becomes a citizen of Jamaica as of the date of the Certificate of Naturalization.

The Jamaican Nationality Act makes provisions for the renunciation of Jamaican citizenship, for example, dual nationality. As previously indicated, deprivation of citizenship acquired by naturalization can occur for treason or conviction of a crime in any country within five years after becoming naturalized, for a period of imprisonment of at least twelve (12) months.

The Act also provides for the restoration of Jamaican citizenship to persons who had acquired Jamaican citizenship by virtue of birth, descent or adoption and who had renounced their citizenship.

Generally, the application process for Jamaican citizenship involves producing the relevant documentary evidence to support the applicant's claim. Depending on the nature of the application, such documents may include birth certificates, marriage certificates, work permits, among others.

Issuance of Jamaican Passports

The Passport Act provides that the Minster of National Security may issue passports to citizens of Jamaica as well as permits to leave Jamaica, certificates of identity or travel documents.

A Jamaican passport is valid for a ten (10) year period from the date of issue and it may be restricted for use to specified countries.

It is an offence for any person to:

- alter, tamper or unlawfully posses a Jamaican passport;
- fail or neglect to send a passport within seven (7) days of finding one to the Passport Officer or to the Officer in charge at the nearest police station;
- part with possession of it to a person without lawful authority or for an unlawful purpose;
- destroy or by wilful neglect allow another to obtain possession of the passport,
- make declaration, without having actual knowledge of an applicant for a passport, verifying the applicant's declaration or vouching for his fitness to receive a passport, merely on information provided by the applicant or other persons; and
- use the passport in a manner inconsistent with any country specification it may be restricted to.

Penalties to which an offender may be liable on summary conviction is to a term of imprisonment with or without hard labour for a year or a fine.

The procedure for obtaining a Jamaican passport involves the submission of an application form with the relevant support documentation (for example, birth certificate, certificate of adoption, naturalization, and in case of a change of name, Marriage Certificate, Deed Poll) substantiating the applicant's identity and assertion of Jamaican citizenship, accompanied by certified photographs of the applicant. Documentary evidence is examined for authenticity and the application processed by the Immigration, Passport and Citizenship Services Division, on satisfaction of which and on payment of the relevant fees, the passport is issued.

Effectiveness of Controls to Prevent Access to weapons by terrorists

1.7 The Firearms Act, the Explosives (Control of Manufacture) Act and the Gunpowder and Explosives Act are still under review.